

REMARKS

Claims 1-22 were examined by the Office, and in the Office Action of September 26, 2008 all claims are rejected. With this response claims 1-3, 5, 10-14, 16 and 21-22 are amended, and claims 4, 6, 15 and 17 are cancelled. All amendments are fully supported by the specification as originally filed. Support for the amendments to the claims can be found at least from page 7, lines 19-34 and page 10, line 18—page 11, line 19 of the specification. Applicant respectfully requests reconsideration and withdrawal of the rejections in view of the following discussion.

Claim Rejections Under § 101

In section 2, on page 2 of the Office Action, claim 11 is rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claim 11 is amended to recite “storage medium” instead of “storage structure.” Therefore, applicant respectfully submits that claim 11 as amended is statutory, and requests withdrawal of the rejection to claim 11.

Claim Rejections Under § 112

In section 3, on page 3 of the Office Action, claims 4-6 and 15-17 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite. Claims 5 and 16 are amended to define the variable “d_r” listed in the equations recited in the claims. Therefore, applicant respectfully submits that claims 5 and 16 are definite. The rejection to claims 4, 6, 15 and 17 is moot in view of the cancellation of those claims.

Claim Rejections Under § 102

In section 6, on page 3 of the Office Action, claims 1-2, 10-13 and 21-22 are rejected under 35 U.S.C. § 102(a) as anticipated by Kar (Internet Path Characterization Using Common Internet Tools (2003)). Applicant respectfully submits that claim 1 is not disclosed or suggested by Kar, because Kar fails to disclose or suggest all of the limitations recited in claim 1. Kar at least fails to disclose or suggest that the first uplink packet and the second uplink packet or the first downlink packet and the second downlink packet differ in size, and the first and second packets in the opposite direction as the first and second packets differing in size have the same size, as recited in claim 1.

In contrast to claim 1, Kar states that the sending host sends a packet of size S, and the receiving host returns a packet of size R in response. See Kar page 126. Kar shows in Figure 1 the roundtrip times based on packet sizes. While Kar shows use of packets of various sizes for round trip time measurements, Kar does not disclose or suggest that the sending host will send a packet of size S, and receive a packet of size R, and then that the sending host will send a packet of a size different from S and the receiving host return a packet of size R, as in the previous exchange. Instead, Kar never mentions that either the sending host or the receiving host transmit a packet of the same size regardless of the size of the other packet, i.e. either S or R. However, claim 1 is amended to clarify that if the first and second uplink packets differ in size for example, the first and second downlink packets are the same size, and if the first and second downlink packets differ in size, the first and second uplink packets are the same size. Applicant respectfully submits that at least this limitation of claim 1 is not disclosed or suggested by Kar.

Independent claims 11-12 and 22 are amended to include limitations similar to those recited in claim 1. Therefore, for at least the reasons discussed above with respect to claim 1, claims 11-12 and 22 are not disclosed or suggested by Kar.

The dependent claims rejected above all ultimately depend from an independent claim, and therefore are not disclosed or suggested by Kar at least in view of their dependencies.

Claim Rejections Under § 103

In section 12, on page 6 of the Office Action, claims 7-9 and 18-20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kar in view of Vilalta et al. (Predictive algorithms in the management of computer systems (2002)). The dependent claims rejected above all ultimately depend from an independent claim, and therefore are not disclosed or suggested by the cited references at least in view of their dependencies.

In section 16, on page 7 of the Office Action, claims 7-9 and 18-20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kar in view of Schulz et al. (Prediction of Communication Performance for Wide Area Computing Systems (2001)). The dependent claims rejected above all ultimately depend from an independent claim, and therefore are not disclosed or suggested by the cited references at least in view of their dependencies.

In section 20, on page 8 of the Office Action, claims 3-6 and 14-17 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kar in view well known art. The dependent claims rejected above all ultimately depend from an independent claim, and therefore are not disclosed or suggested by the cited references at least in view of their dependencies. Furthermore, applicant respectfully notes that the limitation recited in claim 3, i.e. the second downlink packet having the same size as the first downlink packet, and s_uA is different from s_uB are not addressed by the Office. In rejecting claim 3, the Office states on page 10 of the Office Action that official notice is taken that one of ordinary skill in the art would have down that delay = packet size/bandwidth, and that it would have been obvious to one of ordinary skill in the art to calculate delay based on the measured bandwidth in order to avoid the need to measure delay. However, the Office failed to address the limitation of claim 3 mentioned above. Therefore, for at least this additional reason claim 1 is not disclosed or suggested by Kar.


Conclusion

It is therefore respectfully submitted that the present application is in condition for allowance and such action is earnestly solicited. The undersigned authorizes the Commissioner to charge any fee deficiency to Deposit Account No. 23-0442.

Respectfully submitted,

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